

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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Federal Communications Commission
Office of Secretary

In the Matter of)

Section 257 Proceeding to Identify)
and Eliminate Market Entry Barriers)
for Small Businesses)

GN Docket No. 96-113

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REPLY COMMENTS

L/Q Licensee, Inc. (LQL), by its undersigned attorneys, hereby responds to the comments of Mobile Communications Holdings, Inc. (MCHI), filed in this proceeding on September 10, 1996. In its comments, MCHI characterizes the financial qualification standard for the MSS Above 1 GHz service as a barrier to market entry for small businesses.¹ As the licensee of the Globalstar™ low earth-orbiting Mobile Satellite Service system,² LQL is filing these reply comments to provide a more accurate explanation of the Commission's financial standard for the MSS Above 1 GHz service.

First, the financial standard adopted for MSS Above 1 GHz applicants is not a barrier to entry into satellite services markets even for small, entrepreneurial companies. The Commission has found that there are several viable means of

¹ See 47 C.F.R. §§ 25.143(b)(3), 25.140(c-d); Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands, 9 FCC Rcd 5936, 5948-5954 (1994), on recon., 2 CR 673 (1996).

² See Loral/Qualcomm Partnership, L.P., 10 FCC Rcd 2333 (Int'l Bur. 1995), aff'd, FCC 96-279 (released June 27, 1996).

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entry to the market for entrepreneurial companies, which do not require a license for space segment. In fact, the Commission has pointed out that "our necessarily strict [financial] standards will ensure the availability of space segment capacity which will facilitate rather than impede, the progress of smaller entrepreneurial firms seeking to offer satellite services."³

Second, MCHI ignores the fact that the Commission's strict financial standard is based on sound public interest reasons which the Commission reaffirmed earlier this year:⁴

We are sympathetic to small companies without large corporate parents or other access to the hundreds of millions of dollars needed to construct a satellite system. But our primary obligation is to ensure that the U.S. public has available to it the widest range of satellite service offerings from the greatest number of competitors possible. Our repeated experience is that applicants without ready access to the needed financing have difficulty obtaining that financing, and that their attempts are often unsuccessful. This has allowed applicants to hold orbital resources to the detriment of others willing and able to go forward immediately. This ultimately results in fewer choices to the public and less competition.

Thus, the purpose of the Commission's MSS licensing procedures is not to ensure that specific applicants receive licenses but rather that the public receives service.

Third, given the cost of satellite systems, the MSS Above 1 GHz financial standard represents an appropriate requirement for applicants to demonstrate that sufficient funds are available to proceed "with the construction and launch of

³ Domestic Fixed Satellite Service, 58 RR 2d 1267, 1271 (1985) (emphasis supplied).

⁴ Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems, 11 FCC Rcd 2429, 2435 (1996) (footnote omitted).

their proposed satellites immediately upon grant of their applications."⁵ With respect to internal financing, a balance sheet sufficient to cover the cost of the project plus a commitment from management provides recognition that a corporate applicant has the ability and intention to make funds available for the project.⁶ For external financing, evidence of "irrevocable" commitments from financing entities similarly demonstrate that the funds are immediately available to the applicant. MCHI complains about the difficulty of meeting this standard, but fails to recommend an alternative which would provide the same assurance to the Commission of the immediate availability of sufficient funds for the project.

Fourth, MCHI is correct to the extent that it claims that success in the marketplace is ultimately a strong indicator of the potential success of a design for new satellite service. See MCHI Comments, at 8. But, this reasoning leads to a conclusion contrary to MCHI's position, i.e., that the MSS Above 1 GHz financial standard serves its intended purpose. An applicant's difficulty in obtaining financing reflects a legitimate concern in the marketplace that it may not be able to proceed with construction and launch of its system. The Commission cannot cure such a deficiency simply by adopting rules to promote licensing of small businesses.

⁵ Domestic Fixed Satellite Service, 58 RR 2d at 1272 (emphasis supplied).

⁶ See Constellation Communications, 10 FCC Rcd 2258, 2260 (Int'l Bur. 1995), aff'd, FCC 96-279 (released June 27, 1996).

In short, MCHI's comments confuse the difficulties that individual companies may experience in the financial marketplace with the Commission's legitimate and necessary public interest obligations in setting minimum financial standards for applicants to use the radiofrequency spectrum. The MSS Above 1 GHz financial standard is designed to provide assurance -- prior to granting authority to use the MSS Above 1 GHz frequencies -- that the applicant is likely to proceed with construction, launch and operation of a satellite system, and thereby provide service to the public. In deciding to apply an appropriately strict standard, the Commission has protected against spectrum warehousing by financially insecure companies and has promoted rapid deployment of systems

which can provide new services to the public. Whether the applicant is a large or small company, a standard designed to achieve these goals must remain in place.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, William D. Wallace, hereby certify that I have on this 11th day of October, 1996, caused copies of the foregoing Reply Comments to be delivered via hand delivery (indicated with *) or by U.S. mail, postage prepaid, to the following:

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